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09/021,466	02/10/1998	TERRY LEE OEHRKE	1177	4500

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EXAMINER

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2153

23

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 23

Application Number: 09/021,466
Filing Date: February 10, 1998
Appellant(s): OEHRKE ET AL.

Judith L. Carlson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/20/2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims (79-80, 82-85, 91-95, 102, 104, 106, 108, 110, 112); (98-99, 114); (86-88, 103, 109, 111, 113); (81, 89, 96, 105, 107); (100, 115);

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(90, 97); and 101 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,610,841	Tanaka	3-1997
4,914,570	Peacock	4-1990

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 79-80, 82-88, 91-95, 98-99, 102-103 are rejected under 35 U.S.C. 102(e) as being anticipated by Tanaka et al. US patent 5,610,841.

As per claim 79, Tanaka teaches a scalable system for providing network processing and stored data access, comprising:

a server [fig.2 - SCB's 3000's, see col.10 lines 43-52] operative to receive user request;

a switch [fig.2 - ATM SW 4000] connected to the server;

a data storage device [fig.2 MSFS 1000's, see col. 9 lines 59-63] connected to the switch; and

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wherein the server operates independently of the storage device and the system permits independent inclusion or removal of server and storage device [apparent from col.4 lines 22-30, col.7 line 1-7].

As per claims 80, independent removal/addition of servers [SCB] and storage devices [MSFS] is an inherent feature of Tanaka system as explained above.

As per claim 82-88, 91-95, 98-99, 102-103, they are rejected under similar rationales as for claims 79-80 above.

As per claims 104, 106, 108-113, 114, they are rejected under similar rationales as for claims 79-80 above. Tanaka teaches receiving user requests and independently routing data from the storage to the server in response to the query [col.4 lines 22-26].

Claims 81, 89, 96, 100, 105, 107, 115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka et al US patent 5,610,841.

As per claim 81, 89, 96, 100, 105, 107, 115, Tanaka does not specifically disclose the system being use for mail application, news application, directory application, groupware, etc. The specific application provided would have clearly been a matter of design choice. Although Tanaka only discloses providing video on

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demand application, it would have been obvious for one of ordinary skill in the art to apply the teaching of Tanaka to other applications like news, directory, groupware, etc. because it would have enabled a scalable system for handling large number of subscribers [Tanaka col. 7 lines 4-7, col.4 lines 22-30].

Claims 90, 97, and 101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka et al US patent 5,610,841 and further in view of Peacock US patent 4,914,570.

As per claim 90, 97 and 101, Tanaka does not specifically disclose a load balancer to route requests to the servers with the least load. The usage of a load balancer to route request to server with the least load is notoriously well known in the art. Peacock teaches load balancer to distribute work among processors [col.12 lines 50-58]. It would have been obvious for one of ordinary skill in the art to provide a load balancer because it would have provided efficient distribution of requests among servers and prevented overloading of one particular server.

(11) Response to Argument

A. As per the representative claim 79, Applicant argued that Tanaka does not anticipate the claimed invention because Tanaka does not disclose the survivability or scalability of the

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claimed invention. The argument is not persuasive because the survivability and scalability is recited in a wherein clause that merely describe a characteristic of the system. See claim 79 element (d).

Tanaka teaches all the physical element of the claim: a system having server (SCB's) that is connectable to storage device (MSFS's) via a switch (ATM switch). See fig.2. Tanaka does not specifically disclose the survivability and scalability of the system. However, the SCB's do not have any fixed relationship to the MSFS's. Any SCB can be connected to any MSFS as required to satisfy a request for data. The SCB's does not know of the exact number of MSFS devices nor does the MSFS's know of the exact number of SCB's. Tanaka does not disclose any requirement on having a corresponding number of MSFS's to SCB's. Hence, it is an inherent characteristic of Tanaka system that a new SCB can be added to the right side of the switch without adding a MSFS on the left side of the switch, and vice versa. Hence, Tanaka meets all the limitations of claim 79.

B. As per claims 98 and 114, applicant argues that Tanaka does not teach that the storage devices each store substantially the same data such that, in event of a failure of any one of the data storage devices, the data is accessible from another storage device. The argument is not persuasive because, Tanaka

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teaches usage of SCSI disk array. See Col.9 line 60. It is well known in the art that disk array provides for redundancy and recovery such that when one storage device failed, data is retrievable from the remaining operable storage devices.

C. As per claim the representative claim 86, it recites that the servers applies substantially the same application such that failure of one server, subsequent request can be handle by any other servers that are operable. Tanaka teaches the SCB's all applying the same application (processing user request for video and forwarding data received from the MSFS's). See col.10 lines 44+, col.11 lines 65-68. Since, the SCB's are all identical, it is inherent that in an event where one of the SCB failed, subsequence requests would be processed by the remaining operable SCB's.

D. As per the representative dependent claim 81 and 100, applicant merely referred back to the scalability and survivability argument of their respective independent claims. The argument is not persuasive for reasons as stated above.

E. As per claim 90, 97 and 101, applicant argued that Peacock and Tanaka are not combinable and there is no suggestion to combine. The argument is not persuasive because Peacock was cited to provide support for the examiner assertion that provide a load balancer to redirect request from an overload server to

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other less loaded servers are notoriously well know in the art. Peacock specifically suggested providing a load balancer to his inventive system to relieve an overloaded processor. See Peacock col.12 lines 50-58. The rejection is not combining the system of Peacock per se to the system of Takana. Peacock was cited to shown the obviousness of providing a load balancer so as to relieve an overloaded device, a feature explicitly suggested by Peacock in col.12 lines 50-58.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,



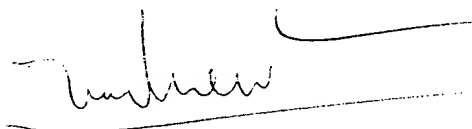
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April 2, 2004

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